

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 6
HON. THOMAS B. LINDBERG
CASE NO. P1300CR20081339

JEANNE HICKS, CLERK
By: Lilly Miller, Deputy Clerk
DATE: January 12, 2010

FILED
DATE: January 12, 2010
3:59 O'Clock P.M.
JEANNE HICKS, CLERK
BY: Lilly Miller
Deputy

TITLE:

STATE OF ARIZONA,
Plaintiff,
vs.

COUNSEL:

Yavapai County Attorney (e)
(For Plaintiff)

STEVEN CARROLL DEMOCKER,
Defendant.

John Sears (e)
Larry Hammond / Anne Chapman
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, AZ 85012
(For Defendant)

HEARING ON:
Pending Motions

NATURE OF PROCEEDINGS

COURT REPORTER
Lisa Chaney (a.m.)/Holly Draper (p.m.)

START TIME: 9:32 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney
Steven DeMocker, Defendant (in custody)
John Sears, Counsel for Defendant
Larry Hammond, Co-Counsel for Defendant
Anne Chapman, Co-Counsel for Defendant

The Court notes that the time is set for a hearing regarding a number of pending motions. Court and Counsel had met in chambers prior to this hearing to discuss the order in which the motions will be addressed. A copy of the list of pending motions will be attached to the minute entry for today's hearing.

Court and Counsel discuss the Defendant's Motion *in Limine* to Preclude the Use of Gruesome Photographs, the request for the Court to conduct an in-camera examination of the photographs, and the numbering of the photographs. Counsel for State is directed to supply the Court with a packet of the photographs in question, preferably in electronic format on a CD.

Discussion ensues regarding the Motion *in Limine* to Preclude Prior Act Evidence Pursuant to Rule 404(b), which will be addressed on Thursday. Counsel for State discusses his concerns that his witnesses will not be available this Thursday.

Counsel Sears and Counsel Butner present argument on the Motion for Reexamination of Conditions of Release.

Court **DENIES** the request for modification of release conditions. However, the Court will enter an order affirming the Defendant's ability to assist in his own defense. The Court will **ORDER** the Yavapai County jail,

through the Yavapai County Sheriff's Office, to provide the Defendant with a secure room with a power plug in order to have access to a computer with external hard drive provided by Defense Counsel that includes all disclosure material. The Court places no restrictions on YCSO to provide for the security of the facility in terms of wandering or searching that is normally done to insure the safety of this inmate and any other inmates. The Court authorizes the Defendant to have access to this secure room and computer for at least 8 hours per day. The Court **ORDERS** that YCSO also evaluate whether or not a secure phone line can be provided in the room as well. The Court believes that the Defendant should also have a headset to preserve attorney-client privilege. The Court directs Defense Counsel to submit a proposed form of order by Friday morning and to have Counsel for State review the order as to form. YCSO is to provide an answer with respect to the secure phone line by **Friday, January 15, 2010**. Counsel Sears addresses the Court regarding the computer issue further.

~~~~~ Recess 10:37 a.m. ~~~~~

At 10:51 a.m., Court reconvenes with Defendant and Counsel previously announced present.

Counsel Hammond and Counsel for State present argument on the Motion *in Limine* re: DNA-Related Testimony. Court and Counsel discuss the status of the DNA testing.

The Court does not have enough information at this time to rule on the Motion *in Limine* concerning limitations on the testimony of the experts. The Court believes that it is appropriate for the State to identify whether the testing is done, when it is done, whether any other tests are anticipated, and to communicate that information to Defense Counsel prior to the testing actually occurring. The Court **ORDERS** that a member of the County Attorney's staff communicate with the lab as soon as possible, but no later than this Thursday, and inquire as to when a report can be anticipated and what additional testing will be done.

Counsel for State indicates that he has already communicated with the lab and is waiting for an answer regarding the status of the report and whether or not they can obtain the bench notes. If Defense Counsel does not receive a satisfactory answer on that issue by Friday, Defense Counsel would like to re-address the Court on that issue. The Court will address that issue again on Friday if necessary.

Counsel Sears addresses the Court regarding a Motion to Compel the State to Respond to a number of requests for supplemental disclosure, which was filed yesterday. Defense Counsel has asked that the State respond to the Motion by January 25, 2010. The Court directs Counsel for State to contact the labs to investigate the issue during the break and notify the Court of the status of those items. Counsel Sears discusses the motion to compel further.

Counsel Chapman and Counsel for State present argument on the Motion *in Limine* to Prohibit Prosecutorial Misconduct. For the reasons as stated on the record, the Court **GRANTS** the Motion *in Limine* to Prohibit Prosecutorial Misconduct.

Off the record, Court and Counsel discuss the issue of Defense Counsel's ability to confer privately with Defendant during the recess and the conditions at the jail on Gurley Street. Off the record, the Court discusses the issue with a detention officer. The Court stands at recess.

~~~~~ Recess 11:54 a.m. ~~~~~

At 1:32 p.m., Court reconvenes with Defendant and Counsel previously announced.

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Counsel Sears addresses the Court further regarding the request for the ability to have private communications with the Defendant during breaks.

Counsel for State advises that he spoke with Detective Huante during the lunch recess, and the Detective indicated that he will be available on Thursday and possibly Wednesday as well. Discussion ensues regarding the scheduling of Detective Huante for the Rule 404(b) hearing. Counsel for State will attempt to have Detective Brown present tomorrow as well.

Counsel Sears addresses the Court regarding the Motion for Jury Questionnaire, Individual Sequestered *Voir Dire* and for Adoption of Jury Selection Plan. The Court discusses the usual weekly trial schedule for other Divisions and this Division's upcoming trial schedule. The Court further discusses the challenges involved in administering a jury questionnaire.

Discussion ensues regarding how many people the jury rooms are able to hold, the Defendant's proposed jury questionnaire, the death penalty question, the anticipated number of trial days (including the jury selection phase), the issue of jurors' exposure to pre-trial publicity, and potential juror hardships.

Court and Counsel discuss specific changes to the language of the Defendant's proposed jury questionnaire, the procedure for individual sequestered *voir dire*, and how many jurors might be interviewed in one day. The Court directs Counsel for State to submit any proposed changes to jury questionnaire questions 73 through 95 (penalty phase) via email to Counsel for Defendant and to this Court.

~ ~ ~ ~ ~ Recess 3:18 p.m. ~ ~ ~ ~ ~

At 3:32 p.m., Court reconvenes with Defendant and Counsel present. The Court had distributed copies of the standard jury questionnaire normally sent out by the Jury Commissioner. Counsel Sears asks for copies of the completed jury questionnaires for the pool of jurors called for this case. The Court discusses the request.

Counsel Chapman and Counsel for State present argument on the Motion *in Limine* to Exclude Police Officers from Testifying as Experts.

The Court **GRANTS** the motion with respect to expert testimony, as the officers have not been disclosed as experts; however, the Court believes that certain testimony regarding the officers' observations or what they perceived is allowable under Rule 701. Counsel Chapman and Counsel for State present further argument on the issue. The Court clarifies its ruling.

END TIME: 3:59 p.m.

cc: VS (e)
Division 6
Dean Trebesch (Contract Administrator) (PD) (e)
YCSO – Detention (e)
Christopher DuPont, Trautman DuPont PLC, 245 W. Roosevelt, Ste. A, Phoenix, AZ 85003, Counsel for Victims
Charlotte and Katherine DeMocker
Jury Commissioner

PENDING MOTIONS AS OF JANUARY 11, 2010

1. Motion for **Jury Questionnaire**, Individual Sequestered Voir Dire and for Adoption of Jury Selection Plan- Tuesday (JMS)
2. Motion in Limine to **Prohibit Prosecutorial Misconduct** – Tuesday (AMC)
3. Motion in Limine to **Exclude Police Officers from Testifying as Experts** – Tuesday (AMC)
4. Motion in Limine to **Preclude the Testimony and Report of Richard Echols and All Testimony Relevant to F(12) Aggravator** – Tuesday (AMC)
5. Motion in Limine re **DNA-Related Testimony** – Wednesday (LAH)
6. Motion in Limine to **Preclude Prior Act Evidence Pursuant to Rule 404(b)** - Thursday (JMS)
7. Defendant's Motion in Limine re **Counsel as Witness** - Wednesday (in chambers) (LAH)
8. Defendant's Motion in Limine re **Huante and Brown Reconstructions** – Tuesday (JMS)
9. Defendant's Motion in Limine to **Preclude the Use of Gruesome Photographs** – Friday (JMS)
10. Defendant's **Motion to Dismiss or in the Alternative for a *Willis* Instruction** – Friday (JMS)
11. Motion to **Declare Death Qualification of the Jury Unconstitutional** for its Failure, in Practice, to Meet the Minimum Constitutional Requirements Set Forth in Furman, Gregg and their Progeny – Wednesday (LAH or AMC?)
12. Motion for **Reexamination of Conditions of Release**- Tuesday (JMS)